

**IN THE HIGH COURT OF SIKKIM
CIVIL EXTRA ORDINARY JURISDICTION**

W. P. (C) No. 60 OF 2015

Mr. Phigu Tshering Bhutia,
S/o Late Dozi Tshring Bhutia,
R/o Simick Lingzey,
East Sikkim. ----- Petitioner.

-VERSUS-

1. State of Sikkim,
Through Chief Secretary,
Government of Sikkim,
Gangtok, East Sikkim.
2. State Election Commissioner,
Amdo Golai, Tadong,
Gangtok, East Sikkim.
3. Special Secretary,
Urban Development & Housing Department,
Gangtok, East Sikkim. ----- Respondents.

PETITIONER

ADVOCATE (S)

FOR ----- Mr. Arohi Bhalla, Mr. Kausik Chatterjee and
Mr. Ashok Subba.

RESPONDENT

ADVOCATE (S)

FOR ----- Mr. J. B. Pradhan, Addl. Advocate General,
Mr. Karma Thinlay, Sr. Govt. Advocate, Mr. S. K.
Chettri and Ms. Pollin Rai Asst. Govt. Advocate.

Case No.

Serial No.	Date	Order (s) with Signature (s)
1	2	3
01.	06.10.15	W.P.(C) No. 60/2015 Phigu Tshering Bhutia vs. State of Sikkim & Ors. BEFORE HON'BLE THE CHIEF JUSTICE MR. JUSTICE S.K. SINHA Present: Mr. Aarohi Bhalla and Mr. Kaushik Chatterjee, Advocates for the Petitioner. Mr. J.B. Pradhan, Addl. Advocate General with Mr. Karma Thinlay, Sr. Govt. Advocate, Mr. S.K. Chettri and Ms. Pollin Rai, Asstt. Govt. Advocates and Mr. D.K. Siwakoti, Advocate (L.O., UD & HD) for Respondents 1 and 3, on advance copy. <u>W.P(C) No. 60/2015</u> Heard. Issue notice. Mr. Pradhan accepts notice on behalf of Respondents 1 and 3. Let steps be taken within seven days for issuance of notice to Respondent No. 2. List for further orders on 02.12.2015. <u>IA No. 01/2015</u> Heard. This is an Application for grant of interim stay. The Petitioner has prayed for staying the effect and operation of the two Notifications bearing Nos. M(63)/GOS/UD & HD/MUN/2015/23 and M(63)/ GOS/UD &

Serial No.	Date	Order (s) with Signature (s)
1	2	3
		HD/MUN/2015/24 both dated 01.09.2015. These Notifications have been issued in exercise of powers conferred by section 15 of the Sikkim Municipalities Act, 2007 (5 of 2007) declaring reservation of seats in Municipalities. It appears that vide an other Notification, bearing No. 13/SEC/2015 dated 09.09.2015, the schedule of election has been notified, according to which polling has to take place on 09.10.2015. Thus, if the effect and operation of the above two notifications are stayed, consequence of that would be staying the forth coming election of 09.10.2015. Article 243ZG (b) provides that no election to any Municipality shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State. In Election Commission of India, Through Secretary vs. Ashok Kumar and Others : (2000) 8 SCC 216, paragraph 14, the term 'election' as occurring in Article 329 has been held to mean and to include the entire process from the issue of the notification under Section 14 of the Representation of the People Act, 1951 to the declaration of the result under Section 66 of the Act. The Hon'ble Supreme Court further observed while summing up the Judgment in paragraph 32, as follows: - "32. For convenience sake we would now generally sum up our conclusions by partly restating what the two Constitution Benches have already said and then adding by clarifying what follows therefrom in view of the analysis made by us hereinabove:

IA No. 01/2015 in W.P.(C) No. 60/2015
Case No.....

Serial No.	Date	Order (s) with Signature (s)
1	2	3
		(1) If an election, (the term election being widely interpreted so as to include all steps and entire proceedings commencing from the date of notification of election till the date of declaration of result) is to be called in question and which questioning may have the effect of interrupting, obstructing or protracting the election proceedings in any manner, the invoking of judicial remedy has to be postponed till after the completing of proceedings in elections. (2) Any decision sought and rendered will not amount to "calling in question an election" if it subserves the progress of the election and facilitates the completion of the election. Anything done towards completing or in furtherance of the election proceedings cannot be described as questioning the election. (3) Subject to the above, the action taken or orders issued by Election Commission are open to judicial review on the well-settled parameters which enable judicial review of decisions of statutory bodies such as on a case of mala fide or arbitrary exercise of power being made out of the statutory body being shown to have acted in breach of law. (4) Without interrupting, obstructing or delaying the progress of the election proceedings, judicial intervention is available if assistance of the court has been sought for merely to correct or smoothen the progress of the election proceedings, to remove the obstacles therein, or to preserve a vital piece of evidence if the same would be lost or destroyed or rendered irretrievable by the time the results are declared and stage is set for invoking the jurisdiction of the court. (5) The court must be very circumspect and act with caution while entertaining any election dispute though not hit by the bar of Article 329(b) but brought to it during the pendency of election proceedings. The court must guard against any attempt at retarding, interrupting, protracting or stalling of the election proceedings. Care has to be taken to see that there is no attempt to utilize the court's indulgence by filing a petition outwardly innocuous but essentially a subterfuge or pretext for achieving an ulterior or hidden end. Needless to say that in the very nature of the things the court would act with reluctance and shall not act, except on a clear and strong case for its intervention having been made out by raising the pleas with particulars and precision and supporting the same by necessary material."

IA No. 01/2015 in W.P.(C) No. 60/2015
Case No.....

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1	2	3
		In view of the above provision of the Constitution as also the Judgment rendered by the Supreme Court, I am not inclined to allow this Application. Consequently, the Application fails and is, accordingly, dismissed.  Chief Justice 06.10.2015

pm/jk
Index : Yes / No
Internet : Yes / No